

IN THE COURT OF APPEALS OF TENNESSEE

AT KNOXVILLE

STATE OF TENNESSEE,)
 DEPT. OF CHILDREN’S SERVICES)
 Respondent/Appellee,)
 v.)
 MURDIS (nmn) PHILLIPS and)
 LORETTA COOK PHILLIPS,)
 Petitioners/Appellants,)
 IN THE MATTER OF:)
 Curtis Lee Phillips, dob 9/30/90)
 Emma Jay Phillips, dob 10/03/94)
 Children Under Eighteen Years of Age)

FILED
 ANDERSON JUVENILE
 July 13, 1999
 NO. 03-0305-0164
 Cecil Crowson, Jr.
 Appellate Court
 Hon. Patrick
 Clark
 JUDGE

AFFIRMED

OPINION

INMAN, Senior Judge

Murdis Phillips and Loretta Cook Phillips appeal from an order of the Anderson County Juvenile Court terminating their parental rights to their two children, Curtis Lee Phillips (DOB 9/30/90) and Emma Jay Phillips (DOB 10/03/94). We affirm the judgment of the trial court.

I.

Our standard of review is set forth in T.C.A. § 36-1-113(c), which provides that termination of parental or guardianship rights must be based upon:

- (1) A finding by the court by clear and convincing evidence that the grounds for termination of parental or guardianship rights have been established; and
- (2) That termination of the parent’s or guardian’s rights is in the best interests of the child.

The termination grounds which the trial court found the State had established by clear and convincing evidence are set forth in T.C.A. § 36-1-113(g)(3):

(3) (A) The child has been removed from the home of the parent or guardian by order of a court for a period of six (6) months and:

(I) The conditions which led to the child's removal or other conditions which in all reasonable probability would cause the child to be subjected to further abuse or neglect and which, therefore, prevent the child's safe return to the care of the parent(s) or guardian(s) still persist;

(ii) There is little likelihood that these conditions will be remedied at an early date so that the child can be safely returned to the parent(s) or guardian(s) in the near future; and

(iii) The continuation of the parent or guardian and child relationship greatly diminishes the child's chances of early integration into a safe, stable and permanent home.

II. FACTS

The circumstances surrounding the removal of the children from the care of their parents are described in the report of Jerry George, Social Counselor, dated April 30, 1996, which reveals that DHS first became involved with this family on October 1, 1990, the day after Curtis, the older child, was born. The initial concerns were about the parents' abilities to provide adequate care for a baby due to the mother's mental retardation and the father being "brain-damaged." DHS reopened a Child Protective Services case on March 3, 1994, following the birth of Emma. Again the concern was the parents' abilities to care for a newborn. The conditions in which Curtis and Emma lived until March 1996, when they were removed from the home, are best portrayed by photographs contained in the record.

DHS and other social service agencies made numerous attempts to help these parents remedy their dangerous living conditions and parental shortcomings before

removing the children from the custody of the parents. Services provided to the family included homemaker, Child Health and Development, and House Calls Home Health Services. Home visits by these agency representatives resulted in continued concern for the children's care due to the parents' limitations and the condition of the home. Caseworkers initially recognized the parents' "love for their children and the close bonding of Curtis to his father and Emma to her mother," but Mr. Phillips' behavior complicated the task and, as discussions were held about the risk of state custody, he made comments about having guns in his house and that he would not let anyone tear his family apart.

The home condition deteriorated, yet Mr. Phillips refused further services. When Home Ties last visited, ". . . the majority of the trailer was without electricity . . . plumbing was clogged up severely and insulation was found throughout the trailer floor . . . old food on the floor, dog feces, dogs with mange in the trailer . . . soot covered the floors, cabinets, clothes, furniture, appliances, windows . . . bathtub half full of black water due to being clogged."¹

The children were placed in foster care on March 27, 1996, where they remained until the time of trial.

The termination hearing was held in Anderson County Juvenile Court on January 20, 1998, at which time caseworkers from a number of agencies testified as to their efforts, after the children were removed from the home, to teach the parents the parenting skills necessary for the return of the children to their home.

Judy O'Sucha, agency case manager at Emory Valley Center in Oak Ridge, testified that the center is a facility for mentally handicapped adults and a sheltered

¹Ken Colbertson, a Home Ties supervisor, led a project to get a water line put in and later helped acquire a newer trailer, pictured in the record. Caseworker Nancy Preston testified that after this second trailer was put in place, it never again resembled the first picture; the yard was always full of debris (beer cans, old shoes, metal). Later pictures in the record confirm her testimony; the new trailer soon looked like its predecessor.

workshop. Mrs. Phillips was assigned to her in 1989 for three months and again on July 1, 1996. During the 1989 assignment, Mrs. Phillips made no progress. During the 1996 assignment, the goal was to teach her (1) simple housekeeping skills, such as which grocery items must be refrigerated, (2) how to tell time, (3) her address (in case she called 911 and needed to give it), and (4) some basic cooking skills. The Center employees tried from July 1996 until July 1997 to teach these four skills to Mrs. Phillips, yet she was only occasionally able to accomplish parts of the first task, and was never able to do the other three. Ms. O'Sucha concluded that Mrs. Phillips had some minor ability to care for herself, such as getting herself dressed and eating, but "I don't think that she can do much beyond that." She was never able to move beyond constant supervision, and she was discharged owing to very erratic attendance.

Sharon Stratton is a Village Coordinator for Ridgeview Psychiatric Hospital and Center in Oak Ridge, an adult day treatment program for persons suffering from mental illnesses. She testified that the Center teaches coping skills, problem solving, anger management, stress management, gender issues, personal hygiene and grooming, crafts and social integration-type activities such as bowling. The DHS referred Mr. Phillips to the Center, and he came voluntarily for four to six weeks as a "visitor," then was evaluated and admitted to the program. Goals for his five days per week program included providing structure, limit setting for inappropriate behaviors, hygiene issues and coping skills. He was anxious, did not trust others, and had difficulty forming bonds with others. He had difficulty interacting with others, so case workers went out in the community with him and worked with him to cue him when he was acting inappropriately. He had a blaming system, described as "a broken record," in which he repeatedly

complained that the government took his children away because they didn't want to see him do well. He also saw himself as a care giver for his wife and was always interested in learning ways to help her. When he described thoughts "racing in his head," the program's medical doctor recommended medication, which Mr. Phillips would not accept until the case worker "worked with him a very long time [six months] . . . and he finally came in one day and agreed he needed it."

After he accepted medication, his focus shifted away from obsessive thoughts about his children, and he was able to maintain conversation with peers and staff about other things. He learned hygiene, basic cooking and cleaning skills. Gradually he was "stepped down" from a five day per week program to one day per week, and at the time of trial, Ms. Stratton felt he could perform daily living skills on a regular basis, so they probably had done all they could do for him. She was not able to express an opinion as to whether the children should be returned to Mr. Phillips; "I don't know. I've never seen the children. I've never seen him in a situation with children. I could not really answer that."

Pam McNish, Ph.D., counseling psychologist, testified that she evaluated Loretta and Murdis Phillips in April 1996. She conducted a clinical interview with Loretta Phillips and administered assessments including the house tree person, kinetic family drawing, incomplete sentence blank and part of the Wechsler Adult Intelligence Scale. She found Loretta to be mildly mentally retarded, indicating that she is fairly limited in her ability to function. Her performance was very childlike and her parenting abilities were very restricted. Although she had really good intentions, she just wasn't able to perform or to understand what was needed to be a good parent. Loretta was not capable of the level of communication required for Dr. McNish to discuss her son's development. She indicated, for

instance, that she would know if Curtis, who was five years old, was sick because he would tell her; she would know that Curtis was hungry because he would go to the kitchen all the time; she would give Emma, then two years old, milk or Coke or Sprite if she was crying. Loretta seemed only to understand that a mother should cook for her children and give them a bath. Dr. McNish opined that Loretta did not appear to be able to adequately parent the children at that time.

Dr. McNish also conducted a clinical interview of Murdis and performed testing including house tree person, kinetic family drawings and incomplete sentence form. She opined that Murdis displayed some symptoms of schizophrenia; he talked about voices that he heard and displayed listening associations. When talking about his two children, he was very much focused on Curtis and seemed unaware of Emma's needs and at times even unaware of her existence. He expressed pleasure at having tricked a social worker into thinking he had been giving Curtis his medicine, when indeed he had not been doing so. His parenting was also very limited; he did not seem to be aware of what children need and relied on Curtis for information on his needs. Dr. McNish opined that at the time of the evaluation, Murdis did not seem to be competent to parent his children.

Bruce McCoy, Ph.D., a psychotherapist working in therapeutic foster care programs with DHS, described an adequate physical environment for a child as being safe, with food and housing, clothing, a certain minimum emotional environment, and the parents' ability to communicate with the child and to understand the basics of developmental stages and milestones. The parent needs to be able to maintain behavioral control of the child and to provide structure, adequate learning, and family scheduling. The parent must be able to communicate

with the child and to go beyond their own personal needs in a way that allows them to see the child's needs.

Dr. McCoy testified that he attempted to teach parenting skills to Loretta and Murdis Phillips in March and April of 1997 but that he "wasn't able to make contact . . . Mrs. Phillips didn't really talk a lot and didn't participate. Mr. Phillips, I was unable to get him to focus on any kind of personal accountability. He stayed totally focused on the idea that he had been mistreated, that it was an adversarial thing happening between him and the state or the system." He opined that Murdis did not demonstrate any progress at all during the time he was being seen.

Ms. Nancy Jo Preston, foster care worker for DHS, testified that she assumed responsibility for the case when the children were placed in foster care in January of 1996. Her review of DHS records indicated that there had been at least 22 referrals about the family between October 1990 and January 1996. Homemakers had tried to teach the parents how to wash their clothing and bathe, but the trailer did not have running water. The children did not have access to soap, toothpaste or washcloths. When Curtis enrolled in Head Start, the other children would have nothing to do with him because he was not clean and smelled bad.

Ms. Preston testified that on the day the children were brought to foster care, Emma was found sitting in either feces or old, dried out, rotten food. She was wearing an oversized t-shirt that was so filthy they couldn't tell what color it was. Her hair appeared to be dark brown, but they later found out that it was actually very light blond. They took her to a doctor, who refused to touch her because of how dirty she was. Curtis was wearing a filthy jacket, a pair of too-large pants with a very large rip in the rear end and tennis shoes with holes in the soles so

large that he was actually walking on bare feet. He was so dirty that "you wouldn't want to touch him."

Home Ties began working on the old trailer, painting several rooms, replacing the electrical box and installing new kitchen linoleum and a kitchen sink. But the parents were not able to maintain the improved condition of the trailer. ("The minute we pulled out, or the minute they wouldn't go daily and instruct Mr. Phillips exactly what he needed to do on a daily basis, it would just fall apart. It didn't seem like he was learning anything.")

Ms. Preston testified that the parents were unable to appreciate the need for medical care for their children. Immediately after Emma was born she required an IV for dehydration, yet Mr. Phillips wanted to take her home; he didn't seem to understand the severity of the illness. Mrs. Phillips cannot read numbers or determine the correct dosages to give medicines to the children, nor can she tell time to know when medicine is due. The caseworkers were also unable to get Mr. Phillips to administer medication as prescribed; he would only give it correctly when a worker was present. When the caseworkers left and later returned, they would find no more medication had been given. They thought he resented their intrusion into his home and family and would wilfully disregard their guidance.

Ms. Preston further testified that the parents provided food consisting mainly of beans, biscuits and fried potatoes. They tried to teach Loretta Phillips to cook other food but met with no success, and when they tried to get Murdis to join in and learn how to do it, he "reacted in a sexual way. And there were some problems and it got to the point where the homemaker wouldn't even walk in the door without another person with her."

Mr. Phillips' sexual behavior caused other problems. Ms. Preston testified that he would grab women's breasts, that he tried to get women to go to bed with him, and that this behavior carried over in Curtis' behavior at school, where he too would grab girls inappropriately and make inappropriate remarks. Emma was also at risk; on one occasion Mr. Phillips contacted DHS and told a caseworker to "get out there right away because he wasn't going to be able to keep his hands off of Emma, that she really turned him on."

Ms. Preston further testified that both children were developmentally delayed as a result of their home environment. Curtis tested below average in all areas, and Emma, who was two years old, had no language; she communicated by "a grunt. She made a sound like a dog. She'd point and go ugh, ugh, or she would cry. She whined." Neither parent understood that the children were suffering from significant cognitive delays.

Ms. Preston testified that the children were finally removed from the home because, despite all the services that had been provided to the parents and all the efforts of the numerous agencies and caseworkers, nothing changed. "We had exhausted our resources and there was no other option. There was no other resource that we could place in there. We used everything that he had available."

Ms. Preston supervised the visitation between the children and their parents up to the time of trial. She testified that the parents ignored Curtis and he and subsequently developed an emotional distance from them; he now will answer any questions they ask, but he has not initiated conversation with them in a long time. He plays by himself or with a case worker and does not interact with his parents in any way. He has no interest in visitation; rather, he sees it as a chore, and he does not appear to have any emotional bond with either parent.

During visitation, Emma's behavior is avoidant. Her play activity is with her brother, and the emotional bonding between the two children appears to be very strong. Usually, the only activity the parents share with Emma is eating, although recently Emma has tried to teach her mother what colors to use in a coloring book. Emma has never gone to her mother for comfort, and neither parent has demonstrated any appreciation that Emma might have needs or interests. She is now beyond her mother in such basic academic skills as counting. Emma has never shown any excitement about visitation, has had to be coaxed into participating, and when it is over, runs out the door. There does not appear to be any attachment between Emma and her parents.

At the time of trial, Emma had received speech therapy and both children had received counseling for nightmares. Curtis, who was originally two years developmentally delayed, had been given regular access to Head Start and had become adjusted to being around other children. "Curtis seemed to take off. And so did Emma." His latest report card showed that he read an accelerated reader in a regular school class and his lowest grade was 97.

The children's foster mother testified that she has cared for them in her home for two years. At first, Emma, who was then two years old, was very clingy. She did not talk and did not play with toys. Curtis, who was five, did not know his ABC's, how to tie his shoes or how to take a bath. He was reluctant to bathe, and Emma screamed so much that the foster mother thought she had probably never been given a bath. Curtis was amazed at the existence of warm water and told her that he had never eaten cooked food; he had always just eaten it from the can.

The foster mother further testified that Curtis is now involved in sports, goes to movies with his foster parents, and loves going camping with his foster father.

Emma loves to be in the kitchen while her foster mother is cooking, and likes to listen to Curtis read. She loves to draw, interacts well in Sunday School, and plays with other children. Both children have learned to go to their foster parents for comfort or help. "They're very loving to people they see a lot of, like grandparents, whereas before they were very withdrawn and would have nothing to do with anybody."

Edward Nelson, ordained elder in the United Methodist Church and Court-Appointed Special Advocate (CASA) for the children, testified that he had visited the parents' home, had met the parents, and had observed the children. He felt the home was dangerous and that the parents were not capable of rearing the children. Curtis actually appeared to be "the leader of the family," rather than his parents, but he was very standoffish, especially towards his father, and did not interact at all with his mother. Both children were apprehensive around their parents. He observed no parent-child bond and no behavior by Murdis or Loretta that could be called parental. He opined that "I sincerely believe that it's in the best interest of these two children that Mr. and Mrs. Phillips' rights be terminated and that they be placed in an adoptive home."

Murdis Phillips testified incoherently, but he did clearly express love for his children and dismay that the children had become attached to their foster parents and detached from their parents. Although he appeared well-intentioned, he expressed little or no insight into the needs of the children or the role of parents.

III. CONCLUSION

The trial judge opined from the bench that this is a case where we have parents who simply are not capable of meeting the needs of the children to allow

the children to grow physically, emotionally, and psychologically into healthy, capable adults. The court found by clear and convincing evidence:

"... that the circumstances which led to the removal continue to exist and are extremely unlikely to be remedied so as to allow a return home at some later date. Specifically, the mother has made no marked or sustained improvement in basic skills necessary for either self-care or for care of the children despite intensive professional intervention. While the father has made improvement as to personal cleanliness, that is his only area of true progress. Additionally, the parents' pattern of limited progress and then substantial regression has continued to exist throughout the time of the children's stay in foster care. There has been no progress as to parenting skills training. . . maintaining the children in foster care would be a futile effort which could interfere with their opportunities for permanency through adoption."

We agree with the trial court that the record in this case contains abundant clear and convincing evidence that the conditions which led to the children's removal persist and prevent their safe return to the care of the parents. We find no evidence that the unsafe conditions will be remedied within the foreseeable future. The continuation of the relationship between Murdis and Loretta Phillips and their children diminishes the children's chances for early integration into a safe, stable home. Accordingly, we affirm the judgment of the trial court at the costs of the appellants.

William H. Inman, Senior Judge

CONCUR:

Herschel P. Franks, Judge

Charles D. Susano, Jr., Judge